

16 FAM 450 ALCOHOL AND DRUG AWARENESS PROGRAM (ADAP)

(CT:MED-1; 02-18-2005)

(Office of Origin: M/MED)

16 FAM 451 PURPOSE

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. The Alcohol and Drug Awareness Program (ADAP), established by the Department of State's Office of Medical Services (M/MED), is for Civil Service and Foreign Service employees and their eligible family members, whether stationed in the United States and its territories, or abroad. The purpose of this program is to:
 - (1) Educate personnel and their eligible family members on the symptoms of alcohol and drug abuse;
 - (2) Encourage employees and their eligible family members with alcohol and drug problems to avail themselves of the counseling and assistance provided on a confidential basis by the medical staff; and
 - (3) Set forth policies and procedures for the Alcohol and Drug Awareness Program (ADAP).
- b. In dealing with alcoholism and drug abuse, the Foreign Affairs agencies take into account the fact that education, treatment, rehabilitation, research, training, and law enforcement are not separate approaches to the problem but are interrelated.

16 FAM 452 AUTHORITY

16 FAM 452.1 Legislation

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

The authorities for the Alcohol and Drug Awareness Program (ADAP) are cited in the United States Code (U.S.C.):

- (1) 5 U.S.C. 7904(a) (authorizing employee assistance programs relating to drug and alcohol abuse);
- (2) 5 U.S.C. 7361 and 7362 (authorizing prevention, treatment and rehabilitation programs relating to drug and alcohol abuse); and
- (3) 22 U.S.C. 4084 (Foreign Service Act of 1980 section 904, authorizing Foreign Service health program).

16 FAM 452.2 Regulations

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Government-wide regulations governing the Alcohol and Drug Awareness Program (ADAP) are published in the Code of Federal Regulations (5 CFR, Part 792).

16 FAM 452.3 Eligibility

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. To be eligible for the Alcohol and Drug Awareness Program (ADAP), an individual must be an employee or family member of the Department of State, or be covered by the Medical and Health Program under 16 FAM.
- b. Eligibility criteria for payment of medical expenses and medical travel can be found in 16 FAM. Eligibility for the ADAP does not imply authorization of payment for medical services.

16 FAM 453 POLICY

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. It is the policy of the Department of State and other participating agencies to offer assistance to Federal employees and eligible family members when there are indications of deteriorating job performance, inappropriate behavior, or questionable reliability apparently as a result of the use of alcohol or other drugs.
- b. Supervisors and managers are urged to become familiar with the Alcohol and Drug Awareness Program (ADAP) and refer the employee to the available resource so that the individual can be restored to full potential as a member of the workforce.
- c. These regulations do not apply to situations in which drug use by an employee has been detected by management as a result of drug testing carried out pursuant to the Drug-Free Workplace Program. Regulations concerning that program, including disciplinary procedures, are published in 3 FAM 2110 and in 3 FAH-1 H-2110.

16 FAM 453.1 Procedures

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. When an employee's use of alcohol or drugs interferes with the efficient and safe performance of the employee's assigned duties, reduces the employee's dependability, or reflects discredit on the agency, the employee's agency may take action in the form of:
 - (1) Nondisciplinary procedures, under which employees and eligible family members with alcoholism and drug misuse/abuse or addiction problems are offered rehabilitative assistance; and/or
 - (2) Disciplinary procedures, when an employee's actions constitute misconduct or if an employee does not respond to rehabilitative assistance with acceptable work performance or creditable conduct; and/or
 - (3) Reporting to an appropriate security authority the circumstances surrounding an employee's substance misuse, abuse or addiction problem, if the conduct poses a hazard to national security interests or to the safety of the employee or others and therefore, requires a limitation on duties or assignments dealing with national security

information; and/or

- (4) Reporting to law enforcement and/or security agency authorities if an employee's or eligible family member's substance misuse, abuse or addiction problem results in documentation of sustained impaired judgment or involves criminal conduct directed toward, or potentially harmful to, the persons or property of others, such as driving a car under the influence of alcohol, selling drugs, or stealing to support a drug habit. Management's first obligation in such cases is to those persons or properties, and then to the employee involved.
- b. Nothing in these regulations must preclude the agency from imposing a disciplinary sanction concurrent with rehabilitative assistance in cases where the employee's conduct has violated law or regulation. Discipline can be imposed regardless of a diagnosis of alcohol or drug misuse or addiction at the time of the employee's misconduct. A diagnosis of alcohol or drug addiction may be a mitigating factor in the imposition of disciplinary action against an employee.
- c. Under no circumstances must an agency employee disclose Alcohol and Drug Awareness Program (ADAP) records or otherwise identify an individual as an ADAP patient, even in response to inquiries from law enforcement officials or investigators, unless:
 - (1) Such officials or investigators obtain the individual's prior written consent;
 - (2) Such officials or investigators obtain a court order in accordance with regulations that pertain to all Federal ADAPs (see (Code of Federal Regulations) 42 CFR Part 2);
 - (3) The investigation is related to a crime on ADAP premises or against the ADAP; and
 - (4) Such disclosures are made in connection with suspected child abuse or neglect in violation of State law.

16 FAM 453.2 Alcohol and Drug Awareness Program (ADAP) Subchapter Definitions

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

ADAP: Alcohol and Drug Awareness Program.

ADAP patients: Individuals who receive ADAP services, including diagnostic, treatment, or referral for treatment, for alcohol or other drug use, abuse, misuse or addiction.

Addiction: Same as alcoholism, but also includes dependence on drugs other than alcohol.

Alcohol abuse: Use of an alcoholic beverage, which impairs the physical, mental, emotional, or social well-being of the user. **NOTE:** The definition of alcohol abuse is found in the Code of Federal Regulations at 42 CFR 2.11.

Alcohol misuse: The problematic use of alcohol that does not rise to the level of alcohol abuse or alcoholism.

Alcoholic: A person who has the illness of alcoholism.

Alcoholism: A chronic, progressive disease with a variable course characterized by dependence upon, and impaired control of, alcohol use that continues despite adverse consequences that may be medical, social, psychological, occupational, legal, or interpersonal in nature.

Counselor: A person qualified by virtue of his or her specialized education, experience, and/or clinical training to provide ADAP counseling.

Drug: A substance that affects behavior, perception, or mood. Drugs include, but are not limited to, controlled substances prescribed for general use by (United States Code) 21 U.S.C. 812 and implementing regulations and any substances in classes such as amphetamines, barbiturates, opiates, cocaine, cannabinoids, hallucinogens such as Phenocyclidine (PCP), inhalants, and alcohol.

Drug abuse: The use of a drug or drugs for other than medicinal purposes that adversely affects the physical, emotional, or social well-being of the user.

Drug misuse: The problematic use of a drug or drugs that does not rise to the level of drug abuse or addiction.

Eligible family members: For purposes of eligibility for ADAP services, these are eligible family members of employees covered by the Department of State Medical and Health Program, or family members of Civil Service employees who meet the same eligibility requirements under 16 FAM 115 and 16 FAM 114.

Minor: A person residing:

- (1) Outside the continental United States who has not attained the age of 18 years; and
- (2) Inside the continental United States who has not attained the age of majority under the laws of the State in which he or she resides.

Patient: Any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse in the ADAP.

Records: Any information in the possession of the ADAP, whether recorded

or not, relating to a patient that was received or acquired by the ADAP.

Substance: Alcohol or any other drug.

16 FAM 453.3 Obligations

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Management at State and supervisory personnel at other participating agencies are required to:

- (1) Recognize that the misuse and abuse of alcohol or other drugs are treatable problems and that alcoholism or other drug addiction is a treatable disease for which the employee may require assistance in the form of counseling, treatment, rehabilitation, and aftercare;
- (2) Consider for employment any person who has had prior alcohol and/or drug misuse, abuse, or addiction problems, subject to the provisions of 12 FAM 230 and 16 FAM;
- (3) Evaluate applicants for employment who actively misuse or abuse alcohol or other legal drugs [**NOTE:** the Rehabilitation Act does not protect people who use illegal drugs] on the same basis as other applicants, subject to the provisions of 12 FAM 230 and 16 FAM;
- (4) Provide referral, counseling, or educational services to employees and their eligible family members to ensure continuing awareness of the signs and symptoms of alcohol and drug misuse, abuse or addiction;
- (5) Encourage employees and their eligible family members who misuse or abuse alcohol or other drugs to seek help from the Alcohol and Drug Awareness Program (ADAP) or from health care providers at posts abroad so that appropriate and confidential medical assistance can be provided;
- (6) Provide employees and their eligible family members, who misuse or abuse alcohol or other drugs, medical assistance that is available to persons having other health conditions;
- (7) Allow sick or other appropriate leave for the purpose of treatment, counseling or rehabilitation;
- (8) Assure the employee that, subject to the provisions of 12 FAM 230 and 16 FAM, requesting counseling or referral assistance for treatment does not jeopardize job security and/or promotional opportunities;

- (9) Provide education for supervisory and managerial personnel outlining their role in identifying possible misuse or abuse of alcohol or other drugs and taking appropriate steps to address the problem (e.g., referral for diagnosis or treatment when necessary);
- (10) Assure that, if disciplinary action proves necessary, it will be initiated solely on the basis of an employee's deficient work performance or conduct which has not met the standards of the Foreign Affairs agencies or is otherwise unacceptable (see 3 FAM 4100). **NOTE:** Exemption is drug use detected pursuant to the Drug Free Workplace Program;
- (11) Assure that, if criminal conduct is directed toward or potentially harmful to national security or to the person or property of others, action will be taken to protect these interests, persons, or properties and that suspected, alleged, or known criminal conduct will be reported to the Office of the Inspector General (OIG) and to the Bureau of Diplomatic Security's Office of Investigations and Counterintelligence (DS/DSS/DO/ICI); and
- (12) Preserve the confidential nature of records in accordance with these regulations (see 16 FAM 457).

16 FAM 454 RESPONSIBILITIES

16 FAM 454.1 General

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. The Secretary of State has designated the Office of Medical Services (M/MED) as the Alcohol and Drug Awareness Program (ADAP) Administrator.
- b. Other participating Foreign Affairs agencies may designate program administrators for their own ADAP in the United States.

16 FAM 454.2 Program Administrators

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Program administrators are responsible for the following:

- (1) Developing an overall coordinated alcohol and drug awareness program (ADAP) that is responsive to the needs of the agency and

that meets the requirements and guidelines of these and other regulations regarding Federal ADAPs;

- (2) Providing continuing leadership and guidance to supervisors in implementing guidelines and instructions for counseling and assisting employees with alcohol or drug misuse, abuse or addiction problems;
- (3) Educating employees about the ADAP and arranging or conducting supervisory training;
- (4) Establishing and maintaining liaison with labor unions and employee organizations through the agency's labor relations specialist (DGHR/PC/LM) to ensure maximum understanding and participation in the program;
- (5) Working closely with the Office of Personnel Management (OPM) to ensure adherence to Federal program objectives and guidelines;
- (6) Identifying and establishing relationships with acceptable community resources to provide or supplement rehabilitation facilities, and maintaining current information on these resources for those who are counseling employees;
- (7) Maintaining statistical records to evaluate the effectiveness of the program and furnishing required statistical reports. Such records and reports, if disclosed, must not contain patients' individual identifiers such as names, social security numbers, addresses, position titles, or other information from which an individual could extrapolate a patient's identity;
- (8) Evaluating the program and recommending changes to improve its operations; and
- (9) Reporting to management on the results and effectiveness of the program, and to the Office of Personnel Management. Such reporting must not contain patients' individual identifiers such as names, social security numbers, addresses, position titles, or other information from which an individual could extrapolate a patient's identity.

16 FAM 454.3 Office of Medical Services (M/MED)

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

The Office of Medical Services (M/MED), through its health care professionals, is directly responsible for:

- (1) Diagnosing substance misuse, abuse and addiction cases that are

self-referred or referred by program administrators, Foreign Service health care providers, supervisors, Bureau of Diplomatic Security (DS), Bureau of Human Resources, Office of Employee Relations (HR/ER), or Director General of the Foreign Service and Director of Human Resources (DGHR);

- (2) Determining an individual's need for medical counseling and assistance in cases that are self-referred or referred by program administrators, Foreign Service health care providers, supervisors, Bureau of Diplomatic Security (DS), Bureau of Human Resources, Office of Employee Relations (HR/ER), or Director General of the Foreign Service and Director of Human Resources (DGHR);
- (3) Offering guidance to the supervisor and, when requested, counseling to the employee based on the supervisor's documentation and knowledge of the employee's declining work performance, attendance problems, or disruptive behavior;
- (4) Providing feedback, subject to the confidentiality rules set forth in 16 FAM 456, to the program administrators of other participating agencies regarding their employees who are diagnosed with substance misuse/abuse/addiction by medical personnel;
- (5) Carrying out educational activities abroad and in the United States to ensure that employees and supervisors understand and comply with the Alcohol and Drug Awareness Program (ADAP);
- (6) Identifying Federal or other medical facilities abroad and in the United States that may be used in substance misuse/abuse/addiction cases;
- (7) Ensuring that medical and other health care professionals have sufficient training or experience in alcohol or drug awareness to perform diagnostic and emergency treatment, and to provide medical advice and counseling to employees and their family members; and
- (8) Protecting the confidential nature of ADAP records in accordance with 16 FAM 457 (see (Code of Federal Regulations) 42 CFR section 2 et seq.).

16 FAM 454.4 Supervisors

16 FAM 454.4-1 Critical Role

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Supervisors have a critical role in the Alcohol and Drug Awareness Program (ADAP); however, they must not attempt to medically diagnose a substance abuse problem. Supervisors do have a legitimate and explicit expectation that their employees will perform jobs satisfactorily and will behave appropriately. When employees fail to fulfill these expectations, supervisors have both the right and the duty to confront them with the evidence, and to provide them with opportunities to correct the problem, regardless of its origin. Timely intervention may lead to early identification and treatment of a medical condition and is essential in returning employees to productivity.

16 FAM 454.4-2 General Procedures

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Supervisors should take the following actions:

- (1) Be sensitive to changes in the work or behavior of supervised employees;
- (2) Document specific instances when an employee's work performance, behavior, or attendance fails to meet minimum standards, or when the employee's pattern of performance and behavior seems to be deteriorating;
- (3) Advise medical or counseling staff of the employee's deficiency. Include any aspect of the employee's duties that might involve dangerous activities;
- (4) Counsel the employee concerning poor work performance or unsatisfactory behavior and inform the employee of available counseling services; and
- (5) Advise the employee, should poor work performance or unsatisfactory behavior continue following counseling, that appropriate disciplinary action may be initiated.

16 FAM 454.4-3 Special Procedures

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. If an employee has a national security sensitive position, or a clearance for access to classified information, or a public trust sensitive position, and is suspected of being involved in illegal activities related to illegal drugs directed solely toward himself or herself, the supervisor should:
 - (1) Inform the counselor, and refer the employee for counseling. Supervisors must not encourage the employee to describe details of the illegal activity or conduct involved; and
 - (2) If conduct indicates suspected, alleged, or known criminal activity, the supervisor must also notify the Director General of the Foreign Service and Director of Human Resources (DGHR) and the Office of the Inspector General (OIG) of all relevant information. If conduct indicates impaired judgment or a potential hazard to national security or others, the supervisor must notify the Bureau of Diplomatic Security's Office of Investigations and Counterintelligence (DS/DSS/DO/ICI) of all relevant information; and
 - (3) If behavior is directed toward, or potentially harmful to, the persons or property of others, such as selling drugs or stealing to support a drug habit, the supervisor should report the known facts to the appropriate agency or office. The supervisor should also inform the employee of the known facts, inform the counselor, and refer the employee for counseling; and
 - (4) Employees are required to notify the Office of the Inspector General if they suspect or know of violations of laws or regulations.
- b. Notwithstanding paragraph a of this section, supervisors and Alcohol and Drug Awareness Program (ADAP) employees must **not** disclose ADAP records or otherwise identify a patient as an ADAP patient, even in response to requests from law enforcement officials or investigators, unless:
 - (1) Such officials or investigators obtain the individual's prior written consent;
 - (2) Such officials or investigators obtain a court order in accordance with regulations that pertain to all Federal ADAPs;
 - (3) The investigation is related to a crime on ADAP premises or against the ADAP; and

- (4) Such disclosure is made in connection with suspected child abuse or neglect in violation of State law.
- c. See 16 FAM 456 and (Code of Federal Regulations) 42 CFR 2 et seq. for detailed guidance.

16 FAM 454.5 Counselors in Other Programs

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Counselors in other programs, such as Equal Employment Opportunity (S/EEOCR) or Career Development and Assignments (HR/CDA), if advised by an employee of a personal alcohol or other drug-related problem, must take the following action:

- (1) Refer the employee immediately to the relevant program administrator, M/MED, or when assigned abroad, Foreign Service health care provider; and
- (2) Adhere to the requirements of 16 FAM 456 on confidentiality of the information supplied by the employee.

16 FAM 454.6 Medical Expenses for Rehabilitation

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Foreign Service Employees)

Payments for alcohol or drug abuse treatment by the Department of State are applicable only for Foreign Service employees or their eligible family members in accordance with the Medical and Health Program regulations in 16 FAM.

16 FAM 455 DISCIPLINARY POLICY AND PRACTICE

16 FAM 455.1 Alcohol and Drug Awareness Program (ADAP) Relationship to Disciplinary Policies and Practices

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. The Alcohol and Drug Awareness Program (ADAP) is carried out as a nondisciplinary procedure aimed at the rehabilitation of substance abusers. However, failure of the employee to accept the assistance offered through the program, or to otherwise correct performance or conduct, is dealt with through disciplinary or other corrective procedures.
- b. In those cases where the agency pursues nondisciplinary procedures in accordance with 16 FAM 453.1, if an employee with an alcohol or substance abuse problem refuses to seek counseling, or if there is no improvement in performance or behavior after efforts at counseling, assistance, or treatment, appropriate disciplinary action maybe taken based on unsatisfactory job performance or unsatisfactory behavior. Shielding an alcohol or substance abuser by tolerating poor performance contributes to the progression of the problem by delaying the person's entry into a rehabilitative program.

16 FAM 455.2 Release of Information

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

In a disciplinary action, substance abuse or addiction information on an employee may only be released in summary form and only with the employee's written consent or pursuant to a court order (see 16 FAM 457).

16 FAM 455.3 Dismissal from Employment

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. Removal from employment of a Federal civilian employee who cannot properly function in employment as a result of substance abuse is permitted by (United States Code) 42 U.S.C. 290dd-1 and 290ee-1.
- b. Removal of such an employee whose employment is not consistent with the interests of national security is provided for in Executive Order 10450 of April 27, 1953.

16 FAM 456 CONFIDENTIALITY

16 FAM 456.1 General

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. Confidentiality of patient information is crucial to the success of the Alcohol and Drug Awareness Program (ADAP). The following regulations apply to records of any person who currently is, or ever was, an ADAP patient.
- b. Confidentiality of patient information must be maintained in accordance with these regulations and with (Code of Federal Regulations) 42 CFR 2.11 et seq. that prohibit disclosure of any ADAP information unless certain conditions are met. For purposes of the assignments and medical clearances, disclosure of information relating to an individual must be permitted only:
 - (1) With the patient's written consent (see 16 FAM 457.2, Disclosure with Patient's Written Consent);
 - (2) In a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for, alcohol or drug abuse; and
 - (3) For other purposes, disclosure of patient information is prohibited unless:
 - (a) The individual consents in writing (see 42 CFR 2.31);
 - (b) It is for purposes of a medical emergency, research, or program audits/evaluations (see 42 CFR 2.51);

- (c) In accordance with a court order (see 42 CFR 2.61);
- (d) Medical communications for the purpose of diagnosis and treatment within the Department of State's Office of Medical Services (M/MED), and between medical personnel and authorized recipients of MED CHANNEL telecommunications (cables) abroad do not constitute disclosures for purposes of these regulations. Such communications are protected from disclosure to persons outside of the medical system through the use of MED CHANNEL, appropriate medical coding of diagnosis and medical procedures in cables, and by the use of appropriate labeling of written medical reports sent by pouch or mail; and
- (e) Records on patients concerning identity, diagnosis, prognosis, or treatment for substance misuse/abuse/addiction are designated "medical-confidential." These records may not be disclosed except for the purposes and circumstances described in this subchapter, and may not otherwise be divulged in any civil, criminal, administrative, or legislative proceeding conducted by any Federal, State, or local authority. The ADAP Director is responsible for maintaining the confidentiality of ADAP patient records.

NOTE: The purpose and circumstances that control disclosure are outlined in the remainder of this subchapter.

16 FAM 456.2 Disclosure with Patient's Written Consent

16 FAM 456.2-1 Nature of Consent

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. The patient may give written consent for disclosure of his or her substance abuse/addiction record, but the consent must state the following:
 - (1) The name of the person or organization to whom disclosure is to be made;
 - (2) The specific type of information to be disclosed;
 - (3) The purpose or need for such disclosure; and
 - (4) The individual's right of revocation.

- b. The substance abuse/addiction record of an incompetent patient may be released to authorized recipients listed in 16 FAM 456.2-3 upon the written consent of the patient's guardian, conservator, or other court-appointed designee.
- c. The records of a deceased patient may be released to authorized recipients listed in 16 FAM 456.2-3 upon the written consent of the patient's executor, administrator, or personal representative.

16 FAM 456.2-2 Extent of Disclosure

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Any disclosure under this subchapter, whether with or without the patient's consent, must be limited to information necessary to meet the need, or fulfill the purpose of, the disclosure.

16 FAM 456.2-3 Authorized Recipients

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. With the written consent described in 16 FAM 456.2-1 and subject to the limitations of 16 FAM 456.2-2, the record may be disclosed to the following persons:

Authorized Person	Purpose of Disclosure
Medical Personnel	For diagnosis or treatment of the patient.
U.S. Government Personnel	To obtain benefits to which the patient is entitled. See 16 FAM 457.2 for a definition of benefits as used in this section.
Patient's Attorney	Upon written application of patient signed by the patient and the attorney.
Parents of a Minor	Information limited to a general evaluation of the patient's present or past status in a treatment program, if in the judgment of a qualified physician or counselor, such information would be helpful in treatment or rehabilitation of the patient.

Authorized Person	Purpose of Disclosure
Potential Employer	Whenever a patient or former patient has been employed or is seeking employment, and such employment is conditioned upon the person's status or progress in a treatment program, an evaluation of such status or progress by qualified medical personnel may be furnished to responsible employment agencies, services, or employers which have demonstrated their willingness to employ, or assist in the employment of, present or former alcoholics or drug abusers in an alcohol or drug abuse treatment or rehabilitation program. (See note below.)
Patient's Family	Information in the nature of a general evaluation of a patient's present or past status in a treatment program may be furnished to members of the patient's family if, in the judgment of a qualified physician or counselor, such information would be helpful in treatment or rehabilitation of the patient.

NOTE: No information may be furnished by a treatment facility to an employer or potential employer unless that facility is satisfied on the basis of past experience or other credible information (which may, in appropriate cases, consist of a written statement by the employer) that such information will be used for the purpose of assisting in the rehabilitation of the patient, and not for the purpose of identifying the individual in order to deny the person employment or advancement because of a history of substance abuse.

b. For purposes of this section, benefits include, but are not limited to:

- (1) Any welfare, Medicare, or other public financial assistance authorized by Federal, State, or local law;
- (2) The suspension of prosecution;
- (3) The granting of probation or parole;
- (4) Public pension or retirement benefits;
- (5) Any other benefit conferred by lawful authority; and
- (6) Payment or reimbursement under a health or other insurance program carried by or on behalf of the patient and under which such patient is a beneficiary or a participant.

- c. Any disclosure to a health or other insurance program must be limited to information which is directly relevant to, and necessary in support of, a claim for payment or reimbursement under such health or insurance program for the benefit of the patient, and any information so disclosed remains subject to all of the restrictions of this subchapter with respect to further disclosure.

16 FAM 456.3 Disclosure without Patient's Consent

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

For more extensive guidance, see (Code of Federal Regulations) 42 CFR section 2 et seq. Generally, disclosure of a patient's record by a program administrator may be made without the consent of the patient and without authority of a court order only as stated in 16 FAM 456.3-1, 16 FAM 456.3-2, 16 FAM 456.3-3, and 16 FAM 456.3-4.

16 FAM 456.3-1 Disclosure without Patient's Consent to Medical Personnel

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Disclosure of a patient's record by a program administrator may be made if a medical emergency exists when competent medical authority determines that the life or health of the patient may be impaired, and medical treatment without the patient's record could be detrimental to the patient's health. See also (Code of Federal Regulations) 42 CFR section 2.51.

16 FAM 456.3-2 Disclosure without Patient's Consent to Qualified Personnel

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Disclosure of a patient's record by a program administrator may be made to qualified personnel but these qualified personnel may **not** identify, directly or indirectly, any individual patient in any report of research, audit, or evaluation, or otherwise disclose patient identities in any manner. For purposes of this section, "qualified personnel" means persons whose training and experience are appropriate to the nature of the work in which they are engaged, and who are performing such work with adequate safeguards against unauthorized disclosures. See (Code of Federal Regulations) 42 CFR

sections 2.52 and 2.53.

16 FAM 456.3-3 Disclosure without Patient's Consent to Parents or Guardians of Minor Patients

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. A physician (healthcare provider) may communicate facts relative to a minor to his or her parents or guardian when, in the provider's judgment:
 - (1) The minor lacks the capacity to make a rational decision to participate in a treatment program because of immature age, physical or mental condition; and
 - (2) Failure to participate in a treatment program poses a substantial threat to the life or physical well-being of the minor or poses a danger to any other person(s).
- b. See (Code of Federal Regulations) 42 CFR 2.14.

16 FAM 456.3-4 Disclosure without Patient's Consent to Law Enforcement Agencies

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. When a patient commits or threatens to commit a crime on the premises of an alcohol or drug abuse program, or against personnel employed by the program, nothing in these regulations must be construed as prohibiting persons from seeking the assistance of, or reporting such crime, to a law enforcement agency. The person involved in the crime or threatened crime will **not** normally be identified as a patient by the reporting person.
- b. See also (Code of Federal Regulations) 42 CFR 2.12(c)(5).

16 FAM 456.4 Disclosure by Court Order

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. Disclosure may be made, if authorized by an appropriate order of a court of competent jurisdiction, after application showing good cause for it. In assessing good cause, the court will weigh the public interest and the need for disclosure against the injury to the patient, the physician patient

relationship, and the treatment service.

- b. See (Code of Federal Regulations) 42 CFR section 2.61 et seq.

16 FAM 456.5 Prohibition against Criminal Charges or Investigation

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. Except as authorized by a court order (see 16 FAM 456.4), **no** alcohol and drug abuse patient records may be used to initiate or substantiate criminal charges against a patient or to conduct any investigation of a patient.
- b. See (Code of Federal Regulations) 42 CFR 2.65 and 2.67.

16 FAM 456.6 Discussion of Illegal Activities

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. The counseling of persons who misuse alcohol or other drugs may sometimes involve discussion of their illegal activities. Except as permitted by these regulations, that is, pursuant to written consent or a court order, Alcohol and Drug Awareness Program (ADAP) counselors must not disclose such information to law enforcement authorities and should not seek to elicit information relating to crimes or criminal conduct from these persons. (See (Code of Federal Regulations) 42 CFR 2.12 et seq. and 2.63.)
- b. No counselor has to accept for counseling a person who persists in discussing illegal activities. Therefore, if information is disclosed on planned illegal activity against others or details of past illegal activity against others, the counselor should consult with legal counsel, where available, regarding the counselor's duties and responsibilities. The counselor should advise the employee that continued disclosure would result in termination of counseling services.

16 FAM 456.7 Disclosure in Disciplinary Actions

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

In a disciplinary action, an Alcohol and Drug Awareness Program (ADAP) counselor may release information on an employee or eligible family member only in summary form and only with the employee's or eligible family member's written consent.

16 FAM 456.8 Fitness for Duty and Pre-Employment Examinations

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

- a. Medical opinion and patient identity may be disclosed to appropriate sections of the Office of Medical Services (M/MED), the Bureau of Human Resources (HR), and/or the Bureau of Diplomatic Security (DS) without the patient's written consent regarding:
 - (1) Fitness for duty;
 - (2) Administrative restrictions on duty;
 - (3) Medical eligibility for employment or assignment; or
 - (4) Security clearance.
- b. However, such disclosures must **not** include Alcohol and Drug Awareness Program (ADAP) records or protected ADAP information about an individual. Instead, disclosures must be limited to a statement that there is a possible health, safety, or national security concern, along with the name of the employee of concern, and any medical recommendation or determination regarding Executive Order 10450 (security clearances), assignments process, or fitness for duty or employment. Such disclosures must **not** indicate that the individual is a drug or alcohol abuser or that the individual is an ADAP patient.

16 FAM 457 REPORTING

16 FAM 457.1 Reporting to Agency in Washington, DC

16 FAM 457.1-1 Reports of Alcohol and Drug Abuse at Posts Abroad

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Medical officers reporting cases by telegram of substance abuse or addiction involving employees or eligible family members should use MED CHANNEL and appropriate medical coding. Written reports should be submitted to the Office of Medical Services (M/MED) in a sealed envelope marked:

Eyes Only - Medical Director and Medical Privileged Information. These reports, based upon information obtained from a patient, are subject to 16 FAM 457.2.

16 FAM 457.1-2 Possession, Trafficking, or Sale of Drugs Abroad or on U.S. Property

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

Reports of suspected illegal possession, trafficking, sale of drugs or other criminal conduct by U.S. citizen employees or their eligible family members are submitted (in accordance with these regulations) as follows:

Agency Report	Submitted To
State employee or eligible family members.	Director General, in the DIRGEN CHANNEL, Office of the Inspector General, via the OIG CHANNEL-STATE, and to the Director, Office of Investigations and Counterintelligence, Diplomatic Security Service (DS/DSS/DO/ICI), via the DS CHANNEL.
Other agencies' employee or eligible family members.	The respective agency's Office of the Inspector General and personnel office. A copy of the message will also be forwarded to the Department of State's Office of the Inspector General (OIG), and to the Office of Investigations and Counterintelligence, Diplomatic Security Service (DS/DSS/DO/ICI).

16 FAM 457.2 Reports to the Office of Personnel Management (OPM)

(CT:MED-1; 02-18-2005)

(State Only)

(Applies to Civil Service and Foreign Service Employees)

The Office of Medical Services (M/MED) submits annual reports to the Office of Personnel Management (OPM) or to other authorized Federal agencies when requested, based on statistical information provided by the program administrators in State. Annual reports are due by July 15 and follow the procedures described in 16 FAM 455.

16 FAM 458 AND 459 UNASSIGNED